IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 344 OF 1999

Mr. J.J. Lakra ... Petitioner

Vs.

Dy. Inspector General (WZ)
CISF, Mumbai & anr. ... Respondents

Mr. P.M. Mokashi for Petitioner.

Mr. D.A. Dubey i/by K.B. Rao for R. No. 1.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 20, 2005

P.C.

. The Petitioner was issued memorandum dated 3.2.1997. The said Memorandum contains two articles of charge. Article I reads as under :

> "Gross act of misconduct and indiscipline in that No. 764480377 Naik J. Lakra of CISF Unit ONGC Nhava Contingent married for the second time with one named Saroj Bhai when already married to Smt. Prafulla without her consent and without taking prior permission from the department.Hence, the charge.

Article II reads as under :

> "Gross act of misconduct and misuse in

that No. 764480377 Naik J. Lakra of CISF Unit ONGC Nhava Contingent, on the medical card issued in the name of his first wife was taking treatment for his second wife without information or permission from the competent authority, thus misusing the facilities. Hence, the charge. "

. An enquiry was conducted where the respondents examined witnesses. The Petitioner examined himself. The order came to be passed based on the enquiry on 13.4.1998 holding the Petitioner guilty of the charges as levelled. The disciplinary authority considering the facts of the case, awarded punishment of compulsory retirement. The Petitioner preferred an appeal before the appellate authority. That appeal came to be dismissed by order dated 20.9.1998 against which the petitioner has filed the present petition.

. At the hearing of this petition, on behalf of the Petitioner, their learned counsel submits that a preliminary enquiry was conducted. The Disciplinary authority relied on the proceedings of the said disciplinary authority without making the same available and in these circumstances, the

finding of the disciplinary authority based on material not made available to the petitioner is liable to be set aside. The reliance for that is placed in the judgment of the case of State of U.P. Vs. Shatrughnalal 1988(2) C.L.R. 857. It is next submitted that the complainant wife herself has subsequently withdrawn the complaint. Though the disciplinary authority has taken note of the same, none the less has not considered the same. Once the complaint was withdrawn, it is submitted that will be no misconduct and consequently also the punishment imposed is liable to be set aside.

. It is lastly submitted that even assuming that the charge of having taken Smt. Saroj to Medical Officer is proved, considering the long service put in by the petitioner, the punishment of compulsory retirement is disproportionate to the misconduct alleged and proved and in these circumstances, also the impugned orders are liable to be set aside.

. On behalf of the Respondents, an affidavit has been filed by Babasaheb Jangalji Kangale. In the said affidavit it has been pointed out that the Petitioner herein had taken medical facilities for Mrs. Saroj as his first wife and thereby misused the facility which is specifically meant for

government employees and their family members. It is also pointed out that in the past the Petitioner was awarded seven minor punishments on different occasions for negligence, indisciplinary acts/negligence of duty. It is also set out that the statement recorded at the preliminary enquiry including that of Smt.Sarojabai were shown to the Petitioner in the course of the enquiry. The material on record would show that the Petitioner was residing with Sarojabai. This by itself is a gross act of misconduct. The Petitioner having a wife living at the relevant time. In so far as contention that the documents were not made available, in Paragraph 8 it was specifically set out that the Petitioner had been given examination of the documents and the Petitioner had acknowledged the same. If the Petitioner had made request for the copy of the same, the same would have been provided to the petitioner. These averments are made on oath by the respondents and have not been denied.

. We may also note memo of appeal before the appellate authority. In the memo of appeal, the first contention raised is that there is no material to show that the petitioner had conducted second marriage. There was no evidence and as such

there can be no presumption that there was marriage. It is therefore, set out that the evidence of P.W. 1 would not be sufficient to prove that there was cohabitation. The photograph is contended cannot be taken in to the evidence. This is in so far as Charge I is concerned. IN so far as Charge II is concerned, the contention is that there is nothing on record to show that the petitioner had taken some other person than his wife for medical treatment. and therefore, it is set out that that charge also not proved. There is no whisper in the said appeal memo that the petitioner had asked for the documents of the preliminary enquiry and that they were denied to him. There is also no averment in the appeal memo that the report of the preliminary enquiry was considered without giving an opportunity to the petitioner herein. With the above, we may now consider the contention as raised on behalf of the Petitioners herein.

. In so far as the first contention is concerned, it is no doubt true that the documents not made available to the Petitioner and which are relevant for the purpose of establishing the guilt if not made available cannot be considered to impose punishment and if done the order will have to be

set aside. In the instant case, as noted earlier, the averments in the affidavit- reply filed on behalf of the respondents that the documents were examined by the petitioner have not been denied. Further also the petitioner raised no such claim in the appeal memo. In other words, what is clear is that such a ground was not raised by the petitioner in the appeal. That being the case, it is not open to the petitioner to raise the pleas for the first time in the present petition. Even otherwise, considering that the averments in the affidavit in reply having not been controverted, it must beheld that the petitioner has examined the documents. In fact in the examination in chief, Petitioner was asked about the same and he has admitted that preliminary enquiry was held in which his deposition was taken. It is similarly admitted that the deposition of Mrs. Saroj was taken. His only contention is that the deposition of 9.1.1997 is correct except to the extent that they had married in the temple. Once that be the case, it cannot be said that the enquiry stands vitiated on that count. The challenge therefore, on that count must be rejected.

. In so far as second charge is concerned, the petitioner was put Question No. 13, which reads as

under :

"How many times, Ms. Saroj have been permitted free examination :

Ans. : At the most, treatment was taken once or twice.

. The Petitioner was shown the medical bill. He stated that it was for his wife Mrs. Prafulla. At any rate what is material to know is that the Petitioner admits having taken Saroj to the Doctor. There are other witnesses who have been examined to show that Mrs. Saroj was cohabiting with Petitioner. These are purely finding of fact. It is therefore, not possible for this court to interfere with the said finding in exercise of extra ordinary jurisdiction, even if it is held that they were not married, but the evidence would show that they were cohabiting.

. Lastly the issue is of proportionally of the punishment. In the instant case, the record would show that earlier petitioner was issued warning on seven occasions for acts of indiscipline and or negligence. The Petitioner was holding the post of Sub Inspector. The charges against the petitioner

are that he was cohabiting with Ms. Saroj in the family quarters where there are other families living. No doubt the Petitioner has put in twenty years of service. The punishment imposed is not of dismissal but of compulsory retirement which will entitle him to have pensionary benefits Hence, we do not think this to be a fit case to interfere with the impugned order in exercise of the extra ordinary jurisdiction.

. Hence, rule discharged. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)